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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Written statement* submitted by the Aliran Kesedaran Negara National Consciousness Movement, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Threats to freedom of religion in Malaysia

Malaysia has witnessed a worrying escalation of religious intolerance towards minority faiths. In the light of the current situation, we would like to share the following update with you.

Implementation of hudud law in Kelantan

In 2015, the Kelantan state government passed amendments to the state's Sharia criminal code[1]. Apart from the constitutional issues raised by the implementation of hudud law in place of the standard common law-based criminal justice system, critics and the general public are largely concerned with the imposition of hudud law on non-Muslims and manifestly disproportionate punishments under hudud law[2]. At this juncture, the state government still requires approval by Parliament in order for them to implement hudud law.

Custodial rights in unilateral conversion

Indira Gandhi

In 2009, the Ipoh Syariah High Court gave Muhammad Riduan custody of his son and two daughters after he had – without their mother's knowledge or permission - converted them to Islam. At that time, their daughters were aged 11 and 12 and their son was only 11 months old.
Their mother, Indira Gandhi applied to the (civil) High Court, which quashed the conversion certificates.

On 30 December 2015, the Court of Appeal, in a 2-1 majority decision, overturned the High Court's decision quashing the conversion certificates, stating that the determination of validity of conversion to Islam was under the exclusive jurisdiction of the Syariah Court (Islamic Court) and therefore the civil courts did not have any jurisdiction to decide on conversion matters that involved a custody battle between Muslim and non-Muslim parents.

On 28 January 2016, Indira Gandhi filed her application for leave to appeal against the Court of Appeal's decision.[3]

Deepa

Deepa's case continued in 2015 with the Federal Court granting Deepa's ex-spouse, Izwan Abdullah a stay against an order that he return his six-year-old daughter to his ex-wife. This decision suspended the earlier decision by the Seremban High Court granting custody to Deepa and the recovery order compelling the return of Deepa's son to her.

With this 'conflict' in court orders, the police under the instruction off the inspector general of police refused to take action on the grounds that there were two conflicting court orders.

In the recent appeal to the Federal Court, the court upheld a previous ruling that suggests that a spouse cannot escape legal liability and responsibility by converting into Islam. Unfortunately, the court also overruled the lower court's decision and granted custody of the eight-year-old son to the husband, who had unilaterally converted to Islam.

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[1] 'PAS wants hudud laws for Kelantan: What you need to know about the laws', The Straits Times, <http://www.straitstimes.com/singapore/pas-wants-hudud-laws-for-kelantan-what-you-need-to-know-aboutthe-laws>

[2] 'Concerns over implementation of hudud in Kelantan', the Straits Times, <http://www.straitstimes.com/asia/se-asia/concerns-over-implementation-of-hudud-in-kelantan>

[3] Child conversion case: M. Indira Gandhi files leave to appeal, the Malay Mail Online, <http://www.themalaymailonline.com/malaysia/article/child-conversion-case-m.-indira-ghani-files-leave-to-appeal#sthash.RLornan0.dpuf>

The court based the decision on the best interests of the child as the son had been in his father's custody in recent years. Even so, the concern was that this decision would set a worrying precedent of 'wrestling' away of custodial rights through alternate means.

On a positive note, the Perlis Religious Council issued a landmark fatwa that would give child custody to the parent who is more suitable, irrespective of their faith[4]. While this decision is laudable and would likely offer hope to those affected by it, it remains to be seen whether the religious councils of other states would adopt a similar stance.

Construction of new places of worship

In April 2015, a church in Taman Medan, Petaling Jaya, was forced to take down its cross following protests by a group of local residents[5]. The protesters were subsequently probed under the Peacefully Assembly Act and charged with trespass under the Penal Code. The Home Minister declared the protests seditious although the inspector general of police publicly denied this.

A similar protest occurred in May at Puncak Alam, Kuala Selangor, over the construction of a Hindu temple in a Muslim-majority area.[6]
In both cases, police took minimal action against the protest organisers.

Conversion issues pertaining to minor

Sustained religious harassment pushed 14-year-old G Thiyaggurudeen to attempt suicide. His case highlights the abject lack of adequate protection for those suffering from harassment by religious groups.[7] Despite police report filed relating to the harassment suffered by the victim and his father, no police action was known to be taken against the perpetrators.

In Sarawak, 13-year-old Sabrina Ngumbang alleged that her teachers had attempted to forcibly convert her to Islam without her parent's consent. In an interview, Sabrina stated that her teachers had provided money for her to purchase prayer clothing after a pre-conversion ceremony. A police report was subsequently made against her teacher for alleged converting the girl to Islam without her parents' consent[8]. Despite the publicity received, Datuk Fatimah Abdullah, Minister for Women, Family and Community Development denied that there had been attempts to convert Sabrina to Islam.[9]

As a state-party to the United Nations Convention on the Rights of the Child (UNCRC), it is deplorable that both the Malaysian federal and state governments fail to take adequate action to protect the rights and interests of children.

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[4] 'Non-Muslim parents allowed child custody under new Perlis fatwa, says report', the Malaysian Insider, <http://www.themalaysianinsider.com/malaysia/article/non-muslim-parents-allowed-child-custody-undernew-perlis-fatwa-says-report>

[5] 'Under the Najib Regime: PJ church forced to take down cross as 'locals' protests', Malaysia Chronicle, <http://www.malaysia-chronicle.com/index.php?option=com_k2&view=item&id=496891:under-the-najibregime-pj-church-forced-to-take-down-cross-as-locals-protest&Itemid=2#axzz3kjpJKJ46>

[6] 'Muslim residents protest against planned building of Hindu temple in Kuala Selangor', the Malay Mail Online, <http://www.themalaymailonline.com/malaysia/article/muslim-residents-protest-againstplanned- building-of-hindu-temple-in-kuala>

[7] 'Religious Fanatics who wreck lives', Free Malaysia Today, <http://www.freemalaysiatoday.com/category/opinion/2015/03/13/religious-fanatics-who-wreck-lives/>

[8] 'Sarawak teenager says teachers tried to convert her to Islam', The Malaysian Insider, <http://www.themalaysianinsider.com/malaysia/article/sarawak-teenager-says-teachers-tried-to-convert-herinto-islam1>

[9] 'Tiada proses Islamkan Sabrina: Fatimah', The Borneo Post Online, <http://www.theborneopost.com/2015/03/28/tiada-proses-islamkan-sabrina-fatimah/>

Recommendations

We urge the United Nations to condemn any restrictions imposed by the Malaysian government in relation to freedom of religion in Malaysia and urge the Malaysian government to:

- Promote policies and practices that ensure the rights of every religious group to exercise their faith free from legal, political, or economic restrictions;
- Honour the constitutional right to freedom of religion under the Federal Constitution.
- Take immediate legal action to arrest and charge extremist groups and individuals who harass and incite hatred and violence against others on religious grounds.

Suaram Rakyat Malaysia (Suaram), an NGO without consultative status, also shares the views expressed in this statement.